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In The

Supreme Court of the United States

October Term, 1970

No. 1827

SS Ranchers, Inc. Engines, Trubbs, Etc. and
Rio Pallesa Oil Mat., S.A.,

Petitioners,

v.

Continental Oil Company, Atlantic
Richfield Company, Getty Oil Company,
and Cities Service Oil Company,

Respondents.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1027

SS ELECTRA, Her Engines, Tackle, Etc. and
RIO PALMEA CIA. NAV., S.A.,

Petitioner,

v.

CONTINENTAL OIL COMPANY, ATLANTIC
RICHFIELD COMPANY, GETTY OIL COMPANY,
and CITIES SERVICE OIL COMPANY,

Respondents.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

To the Honorable Judges of Said Court:

QUESTION PRESENTED

Whether the owners of a tortiously damaged offshore platform are entitled to recover income lost due to the platform's being out of service during necessary repairs.

REASONS FOR DENYING THE WRIT

The respondents had two producing oil wells under their offshore platform when the petitioner's ship collided with and disabled it. During the period of necessary repairs the respondents, but for the collision, would have produced oil having a net value, *i.e.*, market value less cost of production, royalty, and transportation, of $60,000. The United States Court of Appeals for the Fifth Circuit has held that this $60,000 represents "lost profit" which the respondents are

entitled to recover from the tort feasor. The decision below, which involves only a minor aspect of the damages issue in this case, is not in conflict with any other decision, indeed is supported by the decisions, including decisions of this Court,[1] and is obviously correct.

The maxim of *restitutio in integrum*, discussed by the Court of Appeals and now invoked by the petitioner, requires that an innocent tort victim be placed in the pecuniary position it would have been in but for the injury.[2] That purpose ordinarily is accomplished by awarding the victim the cost of repairing its property plus any income it lost as a result of that property's being out of service. The application of this measure in marine collisions commonly calls for the payment of unearned freights or lost charter

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[1] Numerous supporting authorities are cited by the Court of Appeals. Opinion, Appendix to Petition herein, p. 45-46, 431 F.2d 391, 392. The petitioner offers nothing to distinguish these decisions.

[2] *Restitutio in integrum* is the classic maxim of marine collision damage law. Phoenix Ins. Co. v. Atlas, 93 U.S. 302, 307 (1876). The measure of the damages of the innocent collision victim has also been equated with "full indemnity" (The Baltimore, 8 Wall. 377, 387 (1869)), "full compensation" (The Virginia Ehrman and the Agnese, 97 U.S. 309, 317 (1878)), and "entire compensation" (The Louisville, (Strout v. Foster), 1 How. 89, 92 (1843)). It is an application of a fundamental damages concept:

> "It is fundamental in the law of damages that the injured party is entitled to compensation for the loss sustained. Where property is destroyed by wrongful act, the owner is entitled to its money equivalent, and thereby to be put in as good position pecuniarily as if his property had not been destroyed." Standard Oil Co. v. Southern Pacific Co., 268 U.S. 146, 155 (1925).

The leading British text, citing the earlier English authorities, describes the operation of the principle as follows:

> "The object of the award of damages arising out of a collision is to place the owner of the lost or injured ship as nearly as may be in the same pecuniary position as he would have been in but for the collision." Marsden, Collisions at Sea (11th Ed.) 338.

hire on a vessel, in addition to the cost of its repair. But an allowance for their lost income is not the peculiar privilege of injured *shipowners*. As the Court of Appeals pointed out in this case, the same principle is available to tort victims ashore. Opinion, Appendix to Petition herein, p. 47, 431 F.2d 391, 393, citing *Cranston Print Works Co.* v. *Public Service Co. of North Carolina*, 291 F.2d 638 (4th Cir. 1961), and *Brooks Transp. Co.* v. *McCutcheon*, 154 F.2d 841 (D.C. Cir. 1946). The task, whether afloat or ashore, is simply to find out what "net income" or "profit" was lost, though the form of the "income" of course may vary, depending on the nature of the business interrupted. In an operation such as the respondents', their net income or profit consisted of the value of the oil they sold less the cost of producing it.[3] This was the "net value of the production" lost by the respondents during the subject repair period, plainly the legal measure, as held by the Court of Appeals, of the respondents' lost profit.

While the decision of the Court of Appeals in this case is of great interest to these parties, it is hard to believe it is likely to be considered as having much moment outside the limits of this controversy. The decision involves no departure from established principles and precedents and never could be an occasion (as suggested by the petitioner) for uncertainty among others who may someday chance to be confronted by a similar issue. There is thus no need for

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[3] "Net value" of 130 days production from the respondents' wells was stipulated to be $60,000. As the petitioner points out, this figure represents the market value of that much crude oil less the cost of raising it to the surface, barging it, and paying the royalty owner. This of course is the precise definition of the respondents' lost "net income" or "net profit". Fixed expenses, such as marketing and sales expenses, which could not be suspended during the disability of this platform, obviously were not required to be deducted for the purpose of measuring the respondents' damage.

this Court to concern itself with the question involved in this suit.

Finally, the petitioner urges that the Court of Appeals' opinion is based on a miscontruction of a fact stipulation. If the petitioner were right about that, certainly the case would not be an appropriate vehicle for clarification by this Court of a legal principle. In fact, the respondents respectfully submit, as clearly appears from its opinion and a review of the record, the Court of Appeals construed the stipulation accurately, and the undertaking by this Court of the burden of reviewing the lower Court's decision could serve no worthwhile purpose in this case.

CONCLUSION

WHEREFORE, respondents pray that the petition for a writ of certiorari be denied.

Respectfully submitted,

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